

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/25/4927

73 Hillside, Croy, Glasgow, G65 9HJ ("the Property")

The Parties:-

**Mr Derek Wilson, 73 Hillside, Croy, Glasgow, G65 9HJ
("the Applicant")**

**Kelvin Valley Properties, 23 Main Street, Kilsyth, Glasgow, G65 0AH
("the Letting Agent")**

Tribunal Members

Miss Gillian Buchanan (Legal Member)

Ms Sara Hesp (Ordinary Member)

Decision

The Tribunal determined that the Letting Agent has not failed to comply with paragraph 19 of the Code of Practice for Letting Agents and therefore refuses the application.

Background

1. By application dated 17 November 2025, the Applicant applied to the Tribunal for a determination on whether the Letting Agent had failed to comply with paragraph 19 of the Code of Practice for Letting Agents ("the Code"). The Application is made under Section 48 of the Housing (Scotland) Act 2014.
2. By decision dated 21 January 2026, a Convenor on behalf of the President of the Tribunal (Housing and Property Chamber) decided to refer the application to a Tribunal.
3. A Case Management Discussion ("CMD") was assigned to take place on 4 August 2026.
4. Prior to the CMD the Letting Agent lodged with the Tribunal written representations by email dated 30 June 2026.
5. Prior to the CMD and by email dated 31 July 2026 the Applicant's representative, Mr Nwagbara of the Citizens Advice Bureau, sought to lodge with the Tribunal further written representations.

6. The Applicant is the tenant of the Property.
7. The Letting Agent is the contracted managing agent for the landlords of the Property. The landlords are William and Margaret Rose Livingstone ("the Landlords").
8. The application arises out of the Letting Agent's handling of a complaint of render falling from a chimney breast serving the Property and an adjoining neighbouring property in the ownership of a third party, which complaint was first made by the Applicant to the Letting Agent in March 2025.

The CMD

9. The CMD took place on 4 August 2026 by telephone conference. The Applicant attended the CMD and was represented by Mr Nwagbara, both of whom addressed the Tribunal. The Letting Agent was represented by Mr John Rafferty and his colleague, Mr Craig Jewitt, was also in attendance. Mr Rafferty alone addressed the Tribunal.

10. Paragraph 19 of the Letting Agent Code of Practice states: -

"You must not provide information that is deliberately or negligently misleading or false."

Submissions for and by the Applicant

11. The Applicant and his representative made the following oral submissions -
 - i. At the outset of the CMD the Tribunal asked what communications sent by the Letting Agent were considered to be deliberately or negligently misleading or false. Mr Nwagbara referred to the emails of the Letting Agent dated 20 and 22 September 2025.
 - ii. In relation to the email of 20 September 2025 sent to the Applicant at 10:54 by Fiona Brown, Property Manager of the Letting Agent the second paragraph thereof is the subject of the application which states:-

"As agents we have ensured the landlord is aware of the change to the property fabrication but as it currently does not fall below Repairing Standard Scotland guidelines, we must follow the landlord's direction on how to proceed with this issue. I have forwarded your most recent FixFlo job sheet to the landlord, if there is any change to this position, I will get in touch with you."

The Applicant's position is that there is no evidence to back up the statement at that time that the Property *"does not fall below the Repairing Standard Scotland guidelines"*.

The Applicant had communications directly with both the Letting Agent and the Landlords. Communications with the Landlords were oral. The Applicant was aware that in early August 2025 agreement had been reached between the Landlords and the neighbouring proprietor relative to the repairs required to the mutual chimney and these works were effected in October 2025. However, the Applicant considered the photographic evidence showed that the render from the mutual chimney had fallen on the roof and on the grass of the Property, and had blocked the gutter. There was a health and safety issue, he said, and the Property was not safe.

- iii. In relation to the email of 22 September 2025 sent to the Applicant at 09:45 by Fiona Brown, Property Manager of the Letting Agent the words that are the subject of the application are:-

"The repair is not currently causing water ingress into the property but fully understand that it has the potential to do so, hence we have not removed this job from our outstanding repairs list and will continue to chase for a resolution."

The Applicant's position is that without having carried out an inspection the Letting Agent had no way of telling whether there was then water ingress into the Property. He said the render on the chimney had been taken down by the wind and rain. The internal fireplace was sealed and there was no way of knowing what was behind. The contractor who quoted to carry out the remedial works said the repairs required fixed before the weather changed. The Applicant accepted that internally there were no visible signs of the ingress of water.

- iv. The Applicant accepted the neighbour required to be involved in the chimney repair.
- v. However, where the Letting Agent chooses to communicate with the tenant the content must be factual and reasonable care must be taken. The Applicant's position is that there is no contemporaneous evidence that the salient parts of the emails sent by Fiona Brown and complained about were factually correct.
- vi. If the Tribunal finds that the Letting Agent has failed to comply with paragraph 19 of the Letting Agent Code of Practice a Letting Agent Enforcement Order should be made. The Tribunal asked what amount of compensation is sought per the application and why? The application simply refers to "*the small matter of an award of compensation*" still being outstanding but no detail is given. In response the Applicant said that during the period in question he was concerned that the Property condition might get worse and it was not a good time for him.
- vii. Mr Nwagbara suggested that evidence would be required relative to the basis of the Letting Agent's conclusions, whether there was any objective evidence to support them and whether the Letting Agent complied with the Repairing Standard.

Submissions for the Respondent

12. Mr Rafferty made the following oral submissions –

- i. The Property is semi-detached with the neighbouring property and the chimney breast runs down the centre of the properties.
- ii. The chimney breast serves both properties and is a common part of them.
- iii. The required remedial works to the chimney were completed in October 2025 prior to the winter months.
- iv. The works carried out consisted of decorative repairs. There were no leaks and there was no ingress of water.
- v. As the works required were a communal repair the Landlords took ownership of these.
- vi. The neighbouring property is also rented out.
- vii. Ultimately the Landlords and the neighbouring owner agreed to proceed on the basis of a quotation obtained from a roofing company approached by the neighbouring owner and the Landlords of the Property paid their share.
- viii. The Letting Agent accepts the photographic evidence produced by the Applicant.

- ix. There were 109 emails between the Letting Agent, the Applicant and the Landlords relative to this matter. The Applicant was also in direct communication with the Landlords of the Property.
- x. The Property was wind and watertight. The repairs identified were not urgent. At no point was there any water ingress into the Property and at no point did the Property fall below the Repairing Standard.
- xi. The Letting Agent carried out numerous inspections from ground level and internally in both properties. These inspections were carried out by Neil McGougan, Repair and Inspections Manager of the Letting Agent and dated back to the original report made by the Applicant.
- xii. The contractor of the neighbouring owner confirmed there to be no water ingress.
- xiii. The Applicant's own contractor also confirmed there to be no water ingress and that only the top layer of the roughcasting was loose. The repair was decorative and not an emergency.
- xiv. The chimney is built with a cement covering and pebbledash. The issue was that large pieces had come off. The roughcast is only decorative but if more and more had fallen off the damage could reach the point of water penetration. The landlord was keen to get the repairs done before poorer weather.
- xv. The issue with the chimney was not structural.
- xvi. The gutters of the Property were not blocked, no overflowing took place and no work was required to them.
- xvii. The statements made by Fiona Brown in her emails of 20 and 22 September 2025 were correctly made.
- xviii. The Applicant has involved the Property Ombudsman. The Letting Agent has already apologised for any confusion.
- xix. The Applicant confirmed there was no water ingress into the Property as did the Letting Agent's Repair and Inspections Manager and the landlord too.
- xx. Inspections took place every 6 months or so and in response to FixFlo reports.
- xxi. The Property has been sold and the Home Report confirmed there to be no water ingress or damp.

Reasons for Decision

- 13. The Tribunal carefully considered the documentation submitted by the parties and their oral representations.
- 14. The issue arising is a discreet one involving only an alleged breach of paragraph 19 of the Letting Agent Code of Practice and two emails sent by Fiona Brown, Property Manager of the Letting Agent to the Applicant on 20 and 22 September 2025.
- 15. It is important to observe that for there to be a breach of paragraph 19 information provided by the Letting Agent must be "*deliberately or negligently misleading or false*". An error made in good faith, for example, does not amount to a breach of paragraph 19.
- 16. There are no material disputed matters of fact between the parties other than the sole issue of whether the issues reported by the Applicant in March 2025 and subsequently were such that condition of the Property fell below the Repairing Standard. The defects were commonly repaired by the Landlords and the owner of the neighbouring property in October 2025.
- 17. The questions for the Tribunal therefore –
 - i. Did the defects affecting the render the chimney breast first reported by the Applicant in March 2025 and subsequently result in the Property falling below the Repairing Standard?

- ii. Was deliberately or negligently false or misleading information provided to the Applicant in the emails of Fiona Brown of the Letting Agent on 20 and 22 September 2025.
- iii. If so, is a Letting Agent Enforcement Order required and what are the terms thereof?

18. The onus of proof rests with the Applicant. It is his application for compensation.

The Repairing Standard

19. The Repairing Standard is defined in Section 13 of the Housing (Scotland) Act 2006 ("the 2006 Act") which states:-

"13 The repairing standard"

- (1) *A house meets the repairing standard if—*
 - (a) *the house is wind and water tight and in all other respects reasonably fit for human habitation,*
 - (b) *the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,*
 - (c) *the installations in the house for the supply of water, gas, electricity (including residual current devices) and any other type of fuel and for sanitation, space heating by a fixed heating system and heating water are in a reasonable state of repair and in proper working order,*
 - (d) *any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*
 - (e) *any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,*
 - (h) *the house meets the tolerable standard,*
 - (i) *any common parts pertaining to the house can be safely accessed and used,*
 - (j) *the house has satisfactory provision for, and safe access to, a food storage area and a food preparation space, and*
 - (k) *where the house is in a tenement, common doors are secure and fitted with satisfactory emergency exit locks.*
- (2) *In determining whether a house meets the standard of repair mentioned in subsection (1)(a), regard is to be had to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any building regulations.*
- (3) *In determining whether a house meets the standard of repair mentioned in subsection (1)(b), regard is to be had to—*
 - (a) *the age, character and prospective life of the house, and*
 - (b) *the locality in which the house is situated.*
- (4) *The reference in subsection (1)(c) to installations in a house includes reference to installations outwith the house which, directly or indirectly, serve the house and which the owner is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise.*
- (7) *In determining whether a house meets the standards of repair mentioned in subsection (1)(c) to (k) regard is to be had to any guidance issued by the Scottish Ministers in relation to—*
 - (a) *the condition of pipes supplying water for human consumption,*
 - (b) *electrical safety standards in relation to—*
 - (i) *installations for the supply of electricity, and*
 - (ii) *electrical fixtures, fittings and appliances,*
 - (c) *installation of a fixed heating system,*
 - (d) *equipment for detecting fire and for giving warning of fire or suspected fire,*
 - (e) *the tolerable standard,*

- (f) the type of emergency exit locks to be fitted to common doors in tenements,*
- (g) equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health,*
- (h) the provision for, and safe access to, a food storage area and a food preparation space."*

20. A landlord's duty to repair and maintain is described in Section 14 of the 2006 Act which states –

"14 Landlord's duty to repair and maintain

- (1) The landlord in a tenancy must ensure that the house meets the repairing standard—*
 - (a) at the start of the tenancy, and*
 - (b) at all times during the tenancy.*
- (2) The duty imposed by subsection (1) includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the duty in that subsection.*
- (3) The duty imposed by subsection (1)(b) applies only where—*
 - (a) the tenant notifies the landlord, or*
 - (b) the landlord otherwise becomes aware,**that work requires to be carried out for the purposes of complying with it.*
- (4) The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required."*

21. In relation to exceptions to a landlord's repairing duty Section 16 of the 2006 Act states:-

"16 Exceptions to landlord's repairing duty

- (1) The duty imposed by section 14(1) does not require—*
 - (a) any work to be carried out which the tenant is required by the terms of the tenancy to carry out,*
 - (b) any work to be carried out for which the tenant—*
 - (i) is liable by virtue of the tenant's duty to use the house in a proper manner, or*
 - (ii) would be so liable but for any express undertaking on the landlord's part,*
 - (c) the house to be rebuilt or reinstated in the event of destruction or damage by fire or by storm, flood or other inevitable accident, or*
 - (d) the repair or maintenance of anything that the tenant is entitled to remove from the house.*
- (2) The exception made by subsection (1)(a) applies only if the tenancy concerned is—*
 - (a) for a period of not less than 3 years, and*
 - (b) not determinable at the option of either party within 3 years of the start of the tenancy.*
- (3) Where the terms of a tenancy are not agreed until after the tenancy starts, the tenancy is, for the purposes of subsection (2), to be treated as starting on the date of agreement.*
- (4) A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights.*
- (5) For the purpose of subsection (4), in relation to any work intended to be carried out to parts owned in common with other owners but where a majority of the owners has not consented to the intended work, a landlord is to be treated as lacking necessary rights."*

Subsections 16(4) and (5) are particularly noteworthy in this instance relative to the chimney being a common part of the Property and the neighbouring property.

Considerations

22. The start point is the terms of the application. In the application at paragraph 6(b) under the heading "Complaint Details" the Applicant is asked to set out his reasons for considering there has been a failure by the Letting Agent to comply with the Code of Practice. The Applicant states:-

"I believe that this conflict situation would not have arisen if the repair was carried out and completed when it was first reported in March 2025, in hindsight however, the months of inaction to gaining a successful outcome with the letting agents has failed."

There is no discernible statement here relative to the alleged failure to comply with paragraph 19 of the Letting Agent Code of Practice. Rather the complaint appears to be of delay.

23. In the application at paragraph 6(c) the Applicant is asked to set out details of any loss he has suffered as a result of the failure to comply. He states -

"I believe that this property repair has caused me undue stress, frustration and the issues contained in my complaint are consistent with the letting agent being negligent. I have diligently reported the problems to the letting agency and keep accurate records of all communications."

Again it is difficult to fathom from the application alone the basis for the Applicant's complaint.

24. In his formal notification letter to the Letting Agent dated 17 November 2025 the Applicant states:-

"I raised the issue of the render falling from the chimney, blocking the guttering, and potentially causing an issue within the property. The Letting Agents ensured me that the landlord was aware of the change to the property fabrication but as it currently did not fall below Repairing Standard Scotland guidelines it was not urgent. I disagreed with the advice given as according to the guidelines, they are not in proper working order. On two separate occasions, the Letting Agent made statements that were inaccurate and misleading in relation to the outstanding property repair on the property address noted above."

During the CMD and in response to questions from the Tribunal the Applicant and his agent articulated his complaints to be referable to the Letting Agent's emails of 20 and 22 September 2025 as outlined above and the Tribunal therefore proceeds on that basis.

25. Turning to the questions posed at paragraph 17 above the first issue considered by the Tribunal was whether the defects in the chimney breast first reported by the Applicant in March 2025 and subsequently resulted in the Property falling below the Repairing Standard.

The Applicant acknowledged and accepted that the chimney in question served both the Property and the neighbouring property owned by a third party which therefore required a common repair by the Landlords and the adjacent owner. He acknowledged the common repairs to have been effected in October 2025. He accepted that there were no visible signs internally of water ingress into the Property.

In his email of 20 September 2025 sent to Fiona Brown at 12:09 the Applicant states under reference to Section 13(1)(b) of the 2006 Act defining the Repairing Standard (namely, the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order) –

“It is quite clear from the photographic evidence that I have sent you through FixFlo that the gutters have a build up of roughcasting which has come from the already damaged chimney breast. This certainly falls below the Repairing Standard Scotland guidelines as they are not in proper working order.”

This appears to be the nub of the complaint. Were the gutters in a reasonable state of repair and in proper working order?

The photographs submitted by the Applicant to the Letting Agent on FixFlow show the missing render from the chimney and pieces of that render in the gutter (and on the ground beneath). There is no evidence of the gutters being blocked nor does the Applicant suggest them to be blocked in his emails to the Letting Agent.

26. It is important to remember that, having regard to Section 14 of the 2006 Act, a landlord complies with the duty to ensure a property meets the Repairing Standard during a tenancy where any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required.
27. Also in terms of Section 16(4) and (5) of the 2006 Act a landlord is not to be treated as having failed to comply with the duty to ensure a property meets the Repairing Standard where, in relation to any work intended to be carried out to parts owned in common with other owners, a majority of the owners has not consented to the intended work.
28. The parties accept that the chimney was owned in common by the Landlords and the neighbouring owner. The Landlords did not have the necessary rights to attend to the required repairs without the consent of the neighbouring owner. A majority of the owners was required to give consent which, in this instance, was both owners reaching agreement. The Landlords took ownership of the discussions directly with the neighbouring owner. Agreement was reached in early August 2025. The repairs were effected in October 2025. None of that is in dispute.
29. In light of the foregoing the Tribunal does not consider the Landlords were in breach of their duty to ensure the Property met the Repairing Standard during the period from March to October 2025.
30. Nonetheless did the Property fail to meet the Repairing Standard due to the falling render from the chimney breast and broken pieces of render lying in the gutters (albeit not blocking them)? Technically, perhaps it did but that, of itself, is not objectionable in the circumstances.
31. The second issue is whether Fiona Brown for the Letting Agent deliberately or negligently provided false or misleading information to the Applicant in her emails of 20 and 22 September 2025. Taking the Applicant's position at its highest, even if the Property did not meet the Repairing Standard as suggested by the Applicant by virtue of the falling render from the chimney breast and broken pieces of render lying in the gutters there were no visible signs of water ingress into the Property and there was no evidence of nor any

statement that the gutters were blocked. There is no indication at all in the correspondence or elsewhere that Fiona Brown sought to deliberately or negligently deceive the Applicant by providing false or misleading information. What possible motive for that suggestion could there be? On the contrary her communications are courteous and seek to acknowledge the Applicant's ongoing concerns and provide an update on progress. Any error, if there was one at all relative to the Property complying or not with the Repairing Standard, was in good faith and the wording used in those communications is perhaps understandable given that the Landlords were not then in breach of their repairing obligations on any view.

32. The Tribunal does not therefore accept paragraph 19 of the Letting Agent Code of Practice to have been breached by the Letting Agent.
33. For completeness, even if the Tribunal had found paragraph 19 of the Letting Agent Code of Practice to have been breached there is no evidence of the Applicant having sustained any tangible loss or consequence and no award of compensation would have been made in his favour being the only remedy he sought.

Decision

34. The Application is refused.

Right of Appeal

35. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Gillian Buchanan
Legal Member
9 September 2026